

STATE OF MICHIGAN
IN THE SUPREME COURT

In Re

PETITION TO ESTABLISH A COURT RULE
OR ADMINISTRATIVE ORDER CREATING A
STATEWIDE INACTIVE ASBESTOS DOCKETING SYSTEM

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FILED

JUL 1 2003

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**PETITION TO ESTABLISH A COURT RULE
OR ADMINISTRATIVE ORDER CREATING A
STATEWIDE INACTIVE ASBESTOS DOCKETING SYSTEM**

NOW COMES the below-named Defendants, by and through Dickinson Wright PLLC, and for their Petition to Establish a Court Rule or Administrative Order Creating a Statewide Inactive Asbestos Docketing System, say as follows:

1. There has been a deluge of asbestos cases filed in the various trial courts throughout Michigan, the overwhelming majority of which involve Plaintiffs who might have been exposed to asbestos but who have no impairment and no physical symptoms of asbestos-related disease.
2. Defendants are faced with numerous, uncoordinated trial dates in the various Michigan Circuit Courts, forcing them to prepare for 100 or more trials set to begin on the same date.
3. As a practical matter, Defendants have little choice but to settle the cases, including those brought by Plaintiffs who are not impaired and who have no physical symptoms, thus depleting resources which should be conserved for those who are really sick.

4. As a direct result of this flood of litigation, sixty-two (62) companies nationwide have already been forced into bankruptcy, further depleting the resources available to Plaintiffs who are really sick.

5. In order to alleviate the tremendous burden on this state's trial courts and the injustice to Defendants forced to litigate these unimpaired claims, Petitioners request that this Court establish a Court Rule or Administrative Order creating an inactive asbestos docketing system similar to those established in other jurisdictions, which would have the following attributes:

- (a) A claimant with an unimpaired and asymptomatic condition will file a notice of claim in the appropriate circuit court;
- (b) The notice identifies potential defendants and the condition claimed;
- (c) All potential defendants are served with this notice; and
- (d) After service, the claim is placed on the circuit court's inactive asbestos docket, tolling the applicable statute of limitations until such time, if ever, as the claimant develops physical manifestation of an asbestos-related injury such as asbestosis or cancer.

6. Such a system would alleviate the burden unimpaired claims currently place upon Michigan trial courts, will obviate the injustice and expenses for defendants in having to defend unimpaired cases and would preserve resources that could be used for more serious claims involving Plaintiffs who have an actual injury.

WHEREFORE, the below-listed Defendants request that this Court enter an order establishing a Court Rule or Administrative Order establishing an inactive asbestos case docket applying the standards and procedures recently promulgated by the American Bar Association's Commission on Asbestos Litigation.

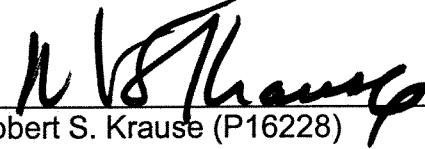
This Petition is submitted on behalf of the following companies who are defendants in Michigan asbestos cases:

General Motors Corporation
Dow Chemical Company
Borg-Warner Corporation
McCord Corporation
Excelsior, Inc.
Robertson-Ceco Corp.
Detroit Stoker Company
American Standard
Stanley Carter Company
F. B. Wright Company
Davey Union Brown Pump Co.
Thermo Process Systems, Inc.
Industrial Firebrick Co.
Hollinger and Company
Everlasting Valve Company
Rowley's Wholesale
York Rubber Company
General Electric
Detroit Pump & Manufacturing Co.
Aurora Pump Company
Bondex International
General Signal Corporation
The Glidden Company
IMO Industries, Inc.
Leeds & Northrup Company
Standard Fuel Engineering
Stockholm Valve & Fittings
Harrison Piping Supply

Ford Motor Company
Owens Corning Fiberglass
Crown Cork & Seal Company
Viking Pump, Inc.
Marlo, Inc.
J. P. Stevens and Company
Goulds Pumps, Inc.
Kentile Floors, Inc.
Livonia Building Materials Co.
Seaway Mechanical Contractors, Inc.
Electric Furnace Company
A. J. Peacock
Industrial Firebrick Warehouse
Pumpford Construction Company
R. C. Hendricks & Sons
Banner Engineering
Van Popplin Brothers
Weil-McLain Company
Lockheed Martin Corp.
Blount Inc.
Carver Pump Co.
Gentex Corp.
The Gorman-Rupp Company
Kinney Vacuum Company
Lindberg Corp.
Lee Wilson Inc.
Lamons Metal Gasket

DICKINSON WRIGHT PLLC

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Dated: July 1, 2003

DETROIT 19326-3 734804

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**MEMORANDUM OF LAW
IN SUPPORT OF PETITION TO ESTABLISH A COURT RULE
OR ADMINISTRATIVE ORDER
CREATING A STATEWIDE INACTIVE ASBESTOS DOCKETING SYSTEM**

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STATEMENT OF QUESTIONS PRESENTED

Should the Michigan Supreme Court, under its general administrative power to control the procedures of all lower courts in the state, establish a court rule or administrative order creating a consolidated inactive asbestos docketing system for claimants with non-malignant asbestos-related conditions who evidence no physical or functional impairment whereby such claimants, upon discovery of such condition, may file a notice with the Wayne County Circuit Court and serve all defendants, thereby tolling the statute of limitations, and remain on the inactive docket until objective medical criteria indicate that the asbestos-related condition has developed into physical injury?

Petitioner Answers: Yes

RELIEF SOUGHT

The establishment of an inactive asbestos docketing system in accordance with standards and procedures recently promulgated by the American Bar Association's Commission on Asbestos Litigation.

I. INTRODUCTION

The chaos and injustice caused by the avalanche of asbestos case filings in Michigan Circuit Courts is best illustrated by trial settings scheduled for later this year. Currently in Wayne County Circuit Court, Defendants are required to take discovery and defend 100 asbestos suits which are set for trial every other month, a total of 600 cases per year. In other counties, trial settings are less regularized. For example, in Saginaw County, there are a total of 267 cases set for trial on October 28, 2003 and December 16, 2003. In between those trial dates, there are 100 cases set for trial in Wayne County in November, 2003. This is a total of 367 cases set for trial in a period of less than 90 days in only two counties! Adding in trial dates from the other Michigan counties would increase the number of cases which have to be discovered and prepared for trial in this less than 90 day period to over 500!

The fact that few, if any of these cases will actually go to trial is not indicative of an effective system. It is impossible for defense firms and plaintiff's firms alike to prepare such a volume of cases. As a result, justice takes a back seat to expediency. Defendants (typically dozens are named in every suit, few having more than a remote, if any, connection to the plaintiff) have no practical alternative. Defendants must settle cases, even those brought by unimpaired plaintiffs with little connection to the Defendant, because settlement is less costly than litigating a case to trial and, in any event, the Defendant could not possibly marshal the resources to prepare so many cases for trial.

And the system is not only unjust for defendants. Those plaintiffs who are truly sick find their recoveries reduced as settlement funds are diverted to pay the claims of unimpaired

plaintiffs.¹ The continued drain on available resources going to unimpaired claims also jeopardizes recoveries by those who may develop serious asbestos-related disease in the future.

Furthermore, the present system, designed for efficient case resolution, is only inviting more cases. The number of asbestos personal injury cases pending in Wayne County has gone from approximately 550 in 1999 to approximately 1500 at the end of 2002,² the vast, vast majority of which involve unimpaired persons.³

There can be no doubt about the enormous cost of asbestos litigation for both Michigan's court system and the defendants who must litigate asbestos claims, over 60 of whom have gone bankrupt and defunct as a direct result of this litigation and, ultimately, the truly sick, both present and future, who are seeing a drain on resources that otherwise would be available to compensate them. There has been a deluge of asbestos personal injury filings involving plaintiffs who are experiencing no physical impairment but who claim asbestos-related

¹ See letter from Judge Colombo dated March 24, 2003 (attached as Exhibit I) at p. 4: "Presently, cancer cases settle at a discounted value because of the large number of asbestosis cases that must be settled.

² Id. at p. 3

³ Ten years ago, the United States Supreme Court stated that "up to one-half of asbestos claims [nationwide] are now being filed by people who have little or no physical impairment." Amchen Prods Inc v Windsor, 521 US 591, 631 (1993) (quoting Christopher F. Eddy, Jr. and Paul C. Weiler, *Asbestos: A Multi-Billion Dollar Crisis*, 30 Harv. J. on Legis. 383, 393 (1993). A more recent study estimates the percentage of such claims is over 90% of the claims filed nationwide. Jennifer Biggs et. al., *Overview of Asbestos Issues and Trends* (Dec. 2001), available at <http://www.actuary.org/mono.htm>.

conditions allegedly caused by occupational asbestos exposure.⁴ How many of these plaintiffs present an actual asbestos-related condition is debatable. However, to the extent the plaintiffs actually have an asbestos-related condition, the overwhelming majority have developed what are called "pleural plaques" and/or "pleural thickening" of the lung. These are non-malignant conditions that can indicate exposure to asbestos, but which do not involve any physical impairment.⁵ There are also large numbers of cases by unimpaired plaintiffs who do not present any asbestos-related condition at all.

In order to alleviate the tremendous burden on this State's courts as well as the injustice to defendants forced to litigate unimpaired claims and to truly sick plaintiffs forced to settle at discounted values, Petitioners hereby request that the Michigan Supreme Court establish a Court Rule or Administrative Order creating an inactive asbestos docketing system. Inactive asbestos docketing systems, as established in other states, permit a claimant who has alleged an asbestos-related condition but is not, in fact, impaired in any way, to file a notice of claim in a circuit

⁴ Id.

⁵ A detailed discussion of these conditions is contained in Schuck, The Worst Should Go First: Deferral Registries in Asbestos Litigation, 15 Harvard Journal of Law & Pub Policy 541 (1992), at 544-550 (**Exhibit C**). In at least one jurisdiction, an asymptomatic asbestos condition such as pleural plaques or pleural thickening has been held to constitute a compensable injury and thus does not give rise to a cause of action. Giffear v Johns-Manville Corporation, 632 A2d 880 (Penn Super 1993), aff'd Simmons v Pacor Inc, 674 A2d 232 (1996).

court.⁶ This notice identifies potential defendants and the pleural condition which the claimant alleges. The claimant serves all potential defendants with this Notice. Once this is done, the claim is placed on the circuit court's inactive asbestos docket, tolling the applicable statute of limitations until such time, if ever, as the claimant develops physical manifestation of an asbestos-related injury such as asbestosis or cancer.

This system would alleviate the enormous burden and injustice created by the unimpaired asbestos suits currently clogging Michigan trial courts dockets. Currently, asbestos defendants are forced to expend time and increasingly scarce resources defending huge numbers of unimpaired claims⁷. These claims not only overburden trial court dockets and cause delay, but they also deplete resources that could be used for the more serious claims involving plaintiffs who have an actual injury from asbestos exposure.

⁶ Petitioner requests that all statewide asbestos personal injury cases be consolidated in front of Judge Robert J. Colombo, Jr. of the Wayne County Circuit Court. Judge Colombo currently handles the Wayne County consolidated asbestos docket and is willing to undertake this assignment. (See Exhibit I)

⁷ Sixty-two (62) of these defendants have given up and declared bankruptcy as a result of asbestos claims. A recent Michigan firm falling prey to asbestos litigation was Federal Mogul Corp. As a result of these bankruptcies, many of which involved asbestos product manufacturers, the type of defendants in the cases has changed. Fifteen years ago, the overwhelming majority of defendants were asbestos product manufacturers; today the defendants are mostly companies who used those products. Victor Schwartz has described this transformation:

"Now with the initial defendants (the actual producers of asbestos) no longer viable, a new series of peripheral defendants have been drawn into asbestos litigation...the new defendants are diverse; they range from oil companies, to automobile manufacturers, to hospitals and colleges, to small family-run businesses, but they all have only attenuated connections to asbestos." A Letter to the Nation's Trial Judges: How The Focus On Efficiency, Is Hurting You and Innocent Victims in Asbestos Liability Cases, Vol. 24.2 American Journal of Trial Advocacy 247 (2000), attached as Exhibit J.

Unimpaired cases typically involve plaintiffs who may never, indeed likely will never, develop any type of asbestos-related illnesses. However, under the current state of Michigan law, plaintiffs who receive notice of a pleural condition, or a possible pleural condition, file suit soon after its discovery.⁸ This may be done to avoid any potential statute of limitations bar if Plaintiffs wait until the pleural condition develops into a serious asbestos-related disease or it may be done simply to recover settlement dollars from a dysfunctional court system. In either case, the filing of unimpaired cases clog the dockets in all circuit courts around the state, unfairly taxing Defendants and depleting resources otherwise available to persons who are or may become sick.

Inactive dockets are not new, or radical. Courts in Middlesex County, Massachusetts, Cook County, Illinois and Baltimore City Circuit Court, Maryland long ago instituted inactive dockets. Senior United States District Court Judge Charles R. Weiner of the Eastern District of Pennsylvania, who is responsible for managing all asbestos personal injury litigation in the federal courts pursuant to the federal multidistrict litigation ("MDL") statute, has created an inactive docket for the thousands of maritime asbestos cases (**Exhibit L**), and ten years ago

⁸ Currently, the current Michigan period of limitation with regard to personal injury/product liability actions is three years. MCL § 600.5805. In asbestos product liability cases, the cause of action accrues at the time the plaintiff discovers the injury. Larson v Johns-Manville Sales Corp, 427 Mich 301, 319, 399 NW2d 1 (1986). It is apparent that pleural asbestos plaintiffs must file suit within three years of the discovery of their pleural condition in order to avoid the statute of limitations bar. See Sanderson v Anchor Packing Co, 1997 WL 33347839, *2 (Mich Ct App 1997), app den sub nom, Lajiness v Dresser Industries Inc, 457 Mich 860, 578 NW2d 688 (1998) (plaintiff barred by statute of limitations from asserting a personal injury claim due to asbestos exposure because he delayed over three years in filing suit after receiving notification about his "pleural disease").

began prioritizing all asbestos claims according to the severity of the injury alleged.⁹ Several Federal District Courts have enacted similar docketing systems.¹⁰

In an emerging trend, more courts are enacting inactive dockets to address the asbestos litigation crisis. The New York City Trial courts recently enacted such a system, as have courts in Syracuse, Washington and South Carolina. Courts in Indiana and Oregon are considering similar systems.

Four jurisdictions have adopted inactive docketing systems that may serve as examples for Michigan: Middlesex County, Massachusetts; Cook County, Illinois; New York City Trial Courts; and Baltimore City Circuit Court, Maryland. In addition, various Federal District Courts have enacted similar inactive docketing systems and more state courts are currently considering

⁹ By Administrative Order No. 3, Judge Weiner instituted a process prioritizing asbestos personal injury claims by severity, which resulted in the dismissal, without prejudice, of thousands of cases involving unimpaired plaintiffs. See Behrens and Parham, Steward-ship for the sick: Preserving Assets for Asbestos Victims Though Inactive Docket Programs, 33 Texas Tech Law Review (2000) (**Exhibit B**).

¹⁰ Prior to the creation of the asbestos MDL, federal districts courts in the District of Hawaii, the District of Connecticut, the Northern District of Oklahoma and the Western District of New York enacted inactive dockets. In re Asbestos Cases (Mulligan v Keene Corp), 586 NE2d 521, 523 n 4 (1991). Two months after implementation of the Cook County Order, discussed infra, the Federal District Court for the Northern District of Illinois entered a similar order in May 1991.

adoption of inactive asbestos dockets. Overall, these systems are substantively the same and contain certain common characteristics, such as: (1) filing a notice of claim and serving the potential defendants with documents indicating that a claimant was exposed to their asbestos products; (2) staying discovery pending transfer to the active docket; (3) specifying a procedure for transferring a claimant's case from the inactive registry to the active court docket; (4) specifying objective medical criteria that evidences a compensable claim that will warrant transfer to the active docket; and (5) outlining a procedure for dealing with claims already pending at the time the inactive docket order is entered, as well as a procedure for dealing with all future claims. Such a system would allow Michigan trial courts to efficiently and effectively deal with those plaintiffs who have the most serious injuries first, thus preserving the pool of funds available for recovery. Furthermore, Defendants will be able to preserve their resources by not having to spend time and money litigating every non-malignant pleural lawsuit. Finally, an inactive system will assist Michigan trial courts in managing their docket and will help control the number and scope of new asbestos filings.

Although the asbestos litigation crisis has received a good deal of attention in Congress of late, it is questionable whether there will be federal legislation addressing the problem any time soon. Meanwhile, asbestos lawsuits continue to be filed.¹¹ There is no reason that the unlikely prospect of federal action should delay Michigan from taking reasonable and necessary steps to preserve justice and fairness in its own courts now.

¹¹ Judge Colombo has obtained a "concession" from three of the major plaintiffs law firms "that each law firm would file no more than one hundred cases every six months" in the Wayne County Circuit Court. Colombo letter, Exhibit I.

II. BACKGROUND

A. Current Trend of Asbestos-Related Injury Lawsuits

Currently, as high as 90 percent of all new asbestos lawsuits are filed by plaintiffs who have few, if any physical injuries or impairments. *Are Inactive Asbestos Dockets Easing the Flow of Litigation?*, COLUMNS-Asbestos, February 2002, p. 2. (Exhibit A). Plaintiffs in many of these cases filed suit because they received information that they had been exposed to asbestos as evidenced by the development of pleural plaques and/or pleural thickening. Behrens and Parham, Stewardship for the Sick: Preserving Assets For Asbestos Victims Through Inactive Docket Programs, 33 Texas Tech L Rev 1, 5-6 (2000) (Exhibit B). However, persons with pleural plaques or pleural thickening usually do not develop more serious asbestos diseases. See In re Hawaii Fed Asbestos Cases, 734 F Supp 1563, 1567 (D Haw 1990) ("In virtually all pleural plaque and pleural thickening cases, plaintiffs continue to lead active, normal lives, with no pain or suffering, no loss of the use of an organ or disfigurement due to scarring"). Pleural plaque/pleural thickening claims are of most concern to the courts and asbestos defendants because they "exacerbate the serious problems that plague the current asbestos compensation system." Behrens and Parham, supra at 6. (Exhibit B) An excellent summary of this problem can be found in the recent report of the American Bar Association's Commission on Asbestos Litigation attached hereto as Exhibit G and by this reference made a part hereof. This Commission was appointed at the request of ABA President-elect Dennis Archer, a former member of this Court.

A major concern of the plaintiffs, and the reason most of the non-malignant cases are filed is the fear that if suit is not filed upon discovery of the pleural condition, the statute of limitations may bar a claim should the claimant develop an asbestos-related disease years later. Behrens and Parham, supra at 5 (Exhibit B). An inactive docket would permit claimants to toll

the applicable state of limitations and preserve their claims in case they develop a physical impairment. Under such a system, cancer and asbestosis claims would take priority. See Schuck, *The Worst Should Go First: Deferral Registries in Asbestos Litigation*, 15 Harvard J of L & Pub Policy 541, 544-550 (1992) (Exhibit C).

B. Jurisdictions with Inactive Asbestos Dockets¹²

1. Middlesex County, Massachusetts

Massachusetts established its inactive asbestos docket in 1986 by order of Judge Hiller Zobel of the Middlesex County Superior Court. See Order Establishing Middlesex County Inactive Asbestos Docket. (Exhibit D). The plaintiffs' bar and various asbestos defendants jointly proposed establishment of the inactive docket. This inactive docket has two important features: (1) the filing of a claim on the inactive docket tolls the applicable statutes of limitations for those plaintiffs who have pleural-related conditions until the time, if ever, when they develop a malignancy or actual asbestosis; and (2) all claims on the inactive docket are exempt from discovery. A claimant petitioning the court for transfer to active status must support his or her position with a physician's affidavit stating that the claimant developed a malignant asbestos-related condition, or experienced a change in a non-malignant, asbestos related condition.¹³ The court determines if transfer is warranted and if so, the claimant can then file a complaint with the county's consolidated asbestos docket.

¹² Each state's inactive docketing systems are discussed in detail in Behrens and Parham, *Stewardship for the Sick: Preserving Assets for Asbestos Victims Through Inactive Docket Programs*, 33 Texas Tech L Rev 1 (2000) **(Exhibit B)** and Are Inactive Asbestos Dockets Easing the Flow of Litigation?, COLUMNS-Asbestos, February 2002. **(Exhibit C).**

¹³ The physician's affidavit must contain certain medical findings, similar to those required by the other jurisdictions discussed herein, to support a claimant's petition for transfer to the active docket.

2. Cook County, Illinois

a) Preliminary Findings

See Order to Establish Registry for Certain Asbestos Matters (March 1999) ("the Cook County Order") (**Exhibit E**). In 1991, plaintiffs and defendants filed a joint motion to establish an inactive asbestos docketing system. Judge Dean Trafelet of the Cook County Circuit Court conducted hearings and made findings of fact which recognized that pleural plaques and pleural thickening indicate exposure to asbestos but do not cause impairment except for the "extremely rare case." Id. p. 2. The court found its inherent power to control its docket and to allocate its resources in the most efficient way it saw fit gave it the authority to establish an inactive docket system. The court held that it had the power to set aside "certain claims or potential claims in a deferred status until such time as the claim is appropriate for judicial attention and relief." Id. at 4. Until a claimant suffered "actual impairment," the claimant's cause of action would be held in abeyance. Id. at 3. More importantly, the court stated that creation of an inactive docket did not give the inactive claims the status of a "case in controversy" because the inactive claimants did not seek legal or equitable relief. Claimants merely sought the tolling of the statute of limitations under the inactive docketing system. Id. at 4.

b) Procedure for Future Claims

The Cook County inactive docket was designed to deal with all claims filed after entry of the order as well as all claims pending at the time of entry. For future claims, the claimant or his attorney must first file an Asbestos Personal Injury Information Sheet. If mesothelioma or other asbestos-related cancer is alleged and certified by a "qualified expert," those claims proceed directly to the active docket. Id. at 8. For all other claims, a Claimant Registry Form must be filed with the court. Claimants must serve counsel for the defendants according to procedures set forth within the order. No filing fees are required for filing of a Claimant Registry Form; a filing

fee will only be assessed if the court transfers the claim from the inactive to the active docket. The most important feature of the Cook County Order is that the filing of the Asbestos Personal Injury Information Sheet and the Claimant Registry Form tolls all applicable statutes of limitations.

When a claimant petitions for transfer to the active docket, the claimant must file a Request for Removal and Leave to File a Complaint with supporting documentation of the illness. Defendants may object within 30 days of service of the Request for Removal and file a two-page statement stating why the claimant does not meet the objective medical criteria established by the order.¹⁴ The court then decides the issue on the papers submitted, or may order a hearing. If the court determines that the case should be transferred, the claimant must file a complaint. After transfer, all applicable rules of procedure apply as in a traditionally filed lawsuit.¹⁵

**c) Procedure for claims filed prior to entry
of the inactive docketing system**

The Cook County Order requires plaintiffs who filed suit prior to entry of the Order to file a Claimant Registry Information Form as well. All pleural plaque or pleural thickening cases were transferred to the inactive docket. All cancer-related claims remained on the active docket.

¹⁴ The minimum criteria needed to transfer to active status includes: (1) A chest x-ray with an ILO rating of 1/0 or greater and pulmonary function test demonstrating total lung capacity below 80%, or a diffusing capacity for oxygen of less than 70% of normal and an FEV-1/FCV ratio of 75% or predicted or greater; or (2) Chest x-ray with an ILO rating of 1/1 or greater and a pulmonary function test demonstrating a diffusing capacity below 80%; or (3) Upon exceptional circumstances, a party can demonstrate actual impairment equal to or greater than (1) or (2) through evidence of asbestosis or evidence that interstitial fibrosis or pleural encasement is so severe that pulmonary function testing could not be completed.

¹⁵ If a plaintiff's case is extremely severe such that death is imminent, the Cook County Order permits application to be made for expedited discovery and trial if a physician's affidavit opines that death will most likely occur within 12 months.

d) The success of the Cook County inactive docket

Current statistics indicate that the Cook County Circuit Court only transfers five to seven cases to the active docket a year. Most all of those are mesothelioma cases, which compose nearly 60 percent of the Cook County asbestos docket. See COLUMNS-Asbestos, supra at 2 (Exhibit A). It is evident that the Cook County inactive asbestos registry has significantly reduced the burden on the court system caused by pleural filings.

e) Challenges to the Cook County Order

Two defendants challenged the Cook County Order shortly after its implementation, but the Illinois appellate court upheld the system both times. In In re Asbestos Cases (Mulligan v Keene Corp), 586 NE2d 521 (Ill CtApp 1991), out of 20 defendants named in this particular suit, Allied Signal was the only party who sought relief from the Order. Id. at 521. Allied claimed that the inactive asbestos system "circumvent[ed] the Illinois statute of limitations and statute of repose and violate[d] its rights under both the Federal and State constitutions by denying its right to trial by jury, due process...and equal protection." Id. at 522.

The Illinois appellate court stated that the trial court established the inactive asbestos system pursuant to a joint motion made by 127 plaintiffs and numerous defendants. Id. The court explained the need for an inactive docket because approximately half the asbestos cases filed in Cook County involved pleural plaques or pleural thickening.

The Illinois Court of Appeals held that "it appears [that the order was] an attempt by an able judge and a goodly portion of the bar to bring some order to a chaotic situation." Id. at 524. The court concluded that the Order was nonappealable because it was a ministerial/administrative order. Explaining further, the court stated that the Order:

[R]egulates the procedural details of litigation made complex because of numbers. Given the number of cases presently in the system, delay in litigating the claims is

inevitable. Thus, the registry is a tool whereby the court may prioritize the litigation of cases already filed and [is] an example of the court exercising its inherent authority to control its docket.

A second challenge to the Cook County Order came in Burns v Celotex Corp, 587 NE2d 1092 (Ill App 1992), with the same result. .

C. Baltimore, Maryland

In 1992, Baltimore City Circuit Court Judge Joseph Kaplan entered an order similar to those in place in Middlesex County, Massachusetts and Cook County, Illinois pursuant to the circuit court's "inherent power to control its docket." See Order Establishing an Inactive Docket for Asbestos Personal Injury Cases p. 1 ("the Baltimore Order") (**Exhibit F**).

Under the Baltimore Order, every claimant must file an Inactive Docket Claimant Information Form. Id. at 7. To serve the defendants, the claimant must serve an Information Form upon the liaison counsel for the defendants, who then redistributes the documents to the named defendants. See id. Inactive Docket Amendment #1.

In order to transfer a claim to the active docket, the claimant must file a Request for Removal that sets forth the minimum medical criteria established by the court indicating that the claimant now suffers from an asbestos-related injury.¹⁶ A defendant may object to the Request for Removal, and the court will decide the issue on the papers filed, unless it orders a hearing. Id. at 9. Just as in Cook County and Middlesex County, if the court orders transfer of a claim to the active docket, the case proceeds as a normal lawsuit. Similar to Middlesex and Cook County

¹⁶ The medical criteria set by the Baltimore City Circuit Court are virtually the same as that set by the Cook County Order. See Baltimore Order, p. 10-11.

dockets, all claims remaining on the inactive docket do not require an answer and are not subject to discovery. The Baltimore inactive docket tolls the applicable statutes of limitations and preserves a claimant's ability to pursue a lawsuit against asbestos defendants should the claimant's condition worsen or develop into a malignancy.

D. New York City

Most recently, on December 19, 2002, Judge Helen Freedman entered an Order establishing an Inactive Docket for all asbestos personal injury or wrongful death claims now pending "in New York County." (See **Exhibit K**) Judge Freedman's Order notes:

More than 21,000 asbestos-related personal injury actions for personal injury or wrongful death are now pending in New York County. Of that number, fewer than 2,000, or 10% of the claimants or decedents suffer or suffered from asbestos-related malignant diseases, and a small percentage of the remainder have sustained functionally impairing asbestosis. For the great majority of plaintiffs and decedents, however, the only clinical markers of asbestos exposure are pleural thickening or plaques that caused no discernable physical impairment." See New York City Order attached as **Exhibit K**.

New York established a Deferred Docket for all claims not meeting the minimum medical criteria for activation. The rest of the docket system is similar to the systems already discussed above, although New York's "minimum criteria" are somewhat higher than those in the other jurisdictions.

E. The American Bar Association's Proposed Standard for Non-Malignant Asbestos-Related Disease Claims

In February 2003, the American Bar Association's Commission on Asbestos Litigation ("the ABA Commission") promulgated a Standard for Non-Malignant Asbestos-Related Disease Claims ("the ABA Standard"). See ABA Standard, Report and Executive Summary (**Exhibit G**). The ABA Standard establishes minimum medical criteria necessary to file a non-malignant

asbestos-related personal injury case.¹⁷ The accompanying report (the "ABA Report") recognizes the serious problem non-malignant, pleural claims have had upon the various states' trial court systems, the defendants who are forced to defend these claims, and the impact upon the most seriously injured plaintiffs.

The ABA Report is directed to the United States Congress with a plea for intervention. The ABA Report recommended that Congress:

(a) identify non-malignant claims, and (b) ensure that state and federal statutes of limitations do not run against individuals who do not yet (and may never) meet the medical criteria in the Standard. ... The Commission's recommendation is designed to establish a minimum impairment threshold in order to file a non-malignant asbestos claim, and is not intended to change the law of causation that exists from state to state.

Id. at p 2. Prompting the ABA's consideration of this issue was the emerging trend in the 1990s regarding asbestos filings that dealt with "for-profit" litigation screenings. These screenings generated "tens of thousands" of plaintiffs who filed suit based upon non-malignant conditions associated with asbestos exposure, but who have little likelihood of developing an asbestos-related malignancy. Id. at 3. The ABA Report recognizes that the focus of asbestos litigation has now shifted to lawsuits dealing with plaintiffs who do not suffer from an asbestos-related disease or impairment. The ABA estimates that two-thirds to 90% of new claims are brought by

¹⁷ The specific medical criteria are fully detailed in the ABA standard. In sum, the ABA Standard would require a "detailed narrative Medical Report and Diagnosis signed by the diagnosing doctor"; a detailed occupational history from the claimant (including exposure to asbestos and other potential causes of pulmonary and lung capacity impairments, such as cigarette smoking); a verification that fifteen years have elapsed from the claimant's first exposure to asbestos and the time of diagnosis; and a requirement of specific medical tests (to be attached to the complaint) that evidence a non-malignant, asbestos-related condition.

plaintiffs with some indication of an asbestos-related pleural condition, but who have suffered no detrimental health effects. *Id.* at 4, citing the RAND Institute for Civil Justice, S. Carroll et al., Asbestos Litigation Costs and Compensation: An Interim Report 17 (2002)(“the RAND Report”)(**Exhibit H**).

The ABA Commission interviewed leading physicians from across the country in order to determine objective medical criteria which would constitute the threshold level of asbestos-related injury that would permit a plaintiff's case to be placed on the active docket upon filing. ABA Report at 9 (**Exhibit G**). If the objective medical criteria are not met, the ABA Report recommends immediate placement of the claim on the inactive asbestos docket.¹⁸ Finally, the ABA Report recommended a tolling provision for the statute of limitations for any cases deferred and placed on an inactive docket. *Id.* at 14.

The ABA Standard, Report and Executive Summary encapsulate the problems associated with the ever-increasing volume of non-malignant asbestos filings, and a viable solution to this problem. The ABA Commission thoroughly researched and analyzed the issues associated with establishing an inactive asbestos docket, and provides this Court with guidance to determine the mechanics and medical criteria necessary to establish such a system in Michigan. The ABA Executive Summary explains that the goals of an inactive asbestos docketing system will be to protect the rights of the most seriously injured and functionally impaired asbestos plaintiffs; preserve scarce judicial resources; preserve the resources of the shrinking pool of defendants; and to prevent future corporate bankruptcies due to asbestos-related litigation. ABA Executive Summary, at 2 (**Exhibit G**).

¹⁸ See Note 9, *supra* for further explanation of the objective medical criteria.

F. The Recent Proposal to the Third Judicial Circuit to Establish an Inactive Asbestos Docketing System

On March 24, 2003, Wayne County Judge Robert J. Colombo, Jr., after meeting with his Asbestos Steering Committee, denied a request to establish an inactive asbestos docket system for Wayne County "at this time".¹⁹ See March 24, 2003 Letter from Judge Colombo to the Asbestos Steering Committee (**Exhibit I**). Judge Colombo's letter explained two of his principal reasons for not implementing an inactive docket at this time:

A similar proposal is presently pending in the United States Congress. It seems like a waste of effort to initiate our own inactive docket, when it appears that some form of relief may be coming this year by way of federal law. I would prefer to wait and see what develops this year in Congress.

An inactive docket can only work if it is implemented statewide. I understand it is Mr. Krause's plan to file an action for superintending control with the Michigan Supreme Court and request that an inactive docket be implemented statewide. Unless the inactive docket is used statewide, plaintiffs could subvert an inactive docket in Wayne County by merely filing their cases elsewhere.

The prospect of federal legislation cannot be counted on to solve Michigan's immediate problem. The likelihood of federal legislation any time soon is not great. Meanwhile, the cases in Michigan, and the concomitant costs and unfairness of the present system, continue.

On the issue of statewide implementation, Judge Colombo expressed interest in the Michigan Supreme Court's ability to consolidate the handling of Michigan asbestos cases. *Id.* at 5-6. He explained that an order akin to Administrative Order 1993-2 (Silicone Gel Implant Products Liability Litigation) would "ensure that the defense bar is not unduly burdened in preparation of cases for settlement conference/trial." *Id.* at 6. In that Administrative Order, the Michigan Supreme Court assigned all statewide breast implant products liability pretrial

¹⁹ All asbestos-related cases filed in the Wayne County Circuit Court have been consolidated before Judge Colombo. In that capacity, Judge Colombo chairs the Asbestos Litigation Steering Committee for Wayne County.

proceedings, including settlement conferences to Judge Colombo. Accordingly, Judge Colombo suggested that if an inactive docket were to be established that it be done on a statewide level.

Despite Judge Colombo's reluctance to establish an inactive docket in Wayne County, he expressed his frustration with the administration of asbestos cases on his docket. Id. He indicated that as late as 1999, he had 550 pending asbestos cases on his docket. Currently, there are 1500 asbestos cases pending in Wayne County. Id. In order to curtail the recent rash of filings, Judge Colombo refused to increase the number of cases set for settlement conferences and trials. Id. at 3-4. However, this had no effect. In order to deal with this problem, Judge Colombo asked the Steering Committee to determine if the plaintiffs' and defense firms could confer and recommend an appropriate number of cases for trial. This effort failed, and Judge Colombo unilaterally set the current number at 100 cases every other month, with a concession from the major plaintiffs' firms that each firm's filings would be limited to 100 new cases every six months per firm. Id. at 4. After this stipulation, one of the plaintiffs' firms immediately filed fifty-two more cases than it had agreed it would file. Judge Colombo then threatened to institute an inactive docket unless these filing were curtailed. The filings then subsided to the agreed-upon levels. Judge Colombo stated that he was reluctant to impose an inactive docket "as long as [the plaintiffs' firms] continue to abide by their agreement." Id.

Among Judge Colombo's reasons for denying the request to establish an inactive asbestos docketing system was his concern that more trials would ensue as plaintiffs' demands would increase in malignancy cases, which he acknowledged settle at a discounted value under the present system. However, Judge Colombo's concern about an increase in the amount of trials disregards the tremendous burden on the defendants to litigate and settle 100 mostly non-malignant cases every other month in Wayne County alone. It also disregards the unfairness that results when truly sick plaintiffs have to settle for less due to the volume of unimpaired plaintiffs.

Judge Colombo speculated that more trials will result in "cancer cases." However, as Judge Colombo recognized, most new asbestos filings would be placed immediately on the inactive docket. The number of "cancer cases" currently pending and yet to be filed will remain low simply because there are many fewer malignancy cases. Regardless, Judge Colombo's speculation about an increase in the amount of trials in malignancy cases does not address the fact that significantly fewer cases would be litigated overall in the state's trial courts, thus alleviating the current administrative burden on the courts and the defendants.

Judge Colombo questioned whether asbestos defendants will really experience any financial savings with an inactive docket. *Id.* at 4. Defendants will in fact, save significant amounts of money if they are not forced to litigate hundreds of non-malignant, pleural claim. Discovery in such cases will be obviated, thus resulting in lower legal fees and costs. Regardless of whether damages demands increase, if two-thirds to 90% of all asbestos filings are relegated to the inactive docket (as Judge Colombo postulated and the ABA Commission predicts) then surely asbestos defendants will realize significant savings. Thus, more funds will be available to

the most seriously injured plaintiffs, the purpose for which the inactive docketing system is designed.

III. ANALYSIS

A. The Michigan Supreme Court's Power to Govern The Administration of the State's Lower Courts

1. General rulemaking authority

This Court has not issued an Administrative Order or Court Rule tolling the statute of limitations in other types of cases that would be similar to an inactive asbestos docket system. However, this Court's general authority to issue rules and directives regarding the policies and procedures to be followed in the state's courts provide a sound basis for implementation of such a system.

The Michigan Constitution grants this Court general superintending control over all lower courts in the state. Mich. Const. 1963, art. VI, § 4. Additionally, the Michigan Constitution grants the Supreme Court broad authority to "establish, modify, amend and simplify the practice and procedure in all courts of this state." Mich. Const., art. VI, § 5. The Revised Judicature Act, MCL § 600.101 et seq., further establishes the Supreme Court's power to implement rules of procedure for Michigan courts. As part of this Court's general superintending control over all courts in the state, it has the authority "to issue any writs, directives, and mandates that it judges necessary and expedient to effectuate its determinations, and to take any action it deems proper to facilitate the proper administration of justice." MCL § 600.219. In addition to these general discretionary powers, this Court also has broad rulemaking ability, set forth in pertinent part as follows:

The Supreme Court has authority to promulgate and amend general rules governing practices and procedure in the Supreme Court and all other courts of record, including...authority:

...
(2) to prescribe the practices and procedure in the supreme court and other courts of record concerning:

...
(g) the staying of proceedings,

...
(k) other matters at its discretion

(3) to prescribe in which cases the circuit court may grant orders to stay proceedings in matters pending in the circuit courts or another inferior court and to prescribe the terms and conditions upon which the orders shall be granted and the effect the orders will have.

MCL § 600.223. Under this broad rule-making ability, this Court has ample authority to issue an Administrative Order or a Court Rule establishing an inactive asbestos docket system. This statutory grant of rulemaking authority specifically permits the Supreme Court to order "the staying of proceedings." MCL § 600.223(2)(g), (3).

This Court's rulemaking authority is also well recognized in Michigan case law. See Staff v Johnson, 242 Mich App 521, 531, 619 NW2d 57 (2000) ("The Supreme Court is given exclusive rulemaking authority in matters of practice and procedure."); In re Lafayette Towers, 200 Mich App 269, 275, 503 NW2d 740 (1993) (The Michigan Supreme Court is charged with the "preclusive responsibility for efficient all-over-the-State judicial service"). See also, Matter of Estate of Hiller, 189 Mich App 716, 719, 473 NW2d 811 (1991); People v Hackett, 421 Mich 338, 361, 365 NW2d 120 (1984); MCR 1.104 ("Rules of practice set forth in any statute, if not in conflict with any of these rules [the Michigan Court Rules], are effective until superseded by rules adopted by the Supreme Court.").

The Supreme Court may issue rules regarding the practice, procedure and conduct of matters within the Michigan court system, so long as those rules do not modify substantive law.

McDougall v Shanz, 461 Mich 15, 27, 597 NW2d 148 (1999).²⁰ Determining whether a statute or rule is substantive or procedural must be determined on a case-by-case basis. Id. at 36. However, it is well established that Michigan law on the statute of limitations is procedural in nature, rather than substantive. Staff, 242 Mich. at 531. See also People v Russo, 439 Mich 584, 595, 487 NW2d 698 (1992); Lothian v Detroit, 414 Mich 160, 166, 324 NW2d 9 (1982); Covell v Spengler, 141 Mich App 76, 82, 366 NW2d 76 (1985); Herrick v Taylor, 113 Mich App 370, 374, 317 NW2d 631 (1982).

2. Amending the Court Rules

This Court is responsible for implementing and amending the Court Rules. See MCR 1.201. This Court, in amending the court rules, must solicit input from the State Bar, judges, and the public. MCR 1.201(B)-(C). See also MCL § 600.224(1) (Supreme Court must conduct a public meeting when considering court rules or administrative orders). After following the procedures prescribed by this Court Rule, this Court could amend the Michigan Court Rules to provide for an inactive asbestos docketing system.

3. Issuing an Administrative Order

Administrative orders are recognized as a legitimate exercise of the Supreme Court's rulemaking ability. See People v Fleming, 185 Mich App 270, 274-276, 460 NW2d 602 (1990). For example, in Fleming, a criminal defendant challenged as unconstitutional the Supreme Court's Administrative Order 1986-1 temporarily assigning all Wayne County Circuit Court

²⁰ McDougall held that MRE 702, the rule of evidence established by the Michigan Supreme Court with regard to the admissibility of expert testimony, did not conflict with MCL § 600.2169, the statute setting forth medical malpractice expert witness qualifications, because the statute was substantive, rather than procedural. McDougall, 461 Mich at 37. The court held that statutes are procedural when "no clear legislative policy reflecting considerations other than judicial dispatch of litigation can be identified." Id. at 30 (quoting Kirby v Larson, 400 Mich 585, 598; 256 NW2d 400 (1977)).

judges as visiting judges of the Detroit Recorder's Court and vice versa.²¹ Defendant argued that the Michigan Constitution only gave the Supreme Court the ability to make temporary assignments of judicial duties. The defendant also claimed that the order was "open-ended" and permanent, rather than temporary. The Court of Appeals disagreed. It held that the Michigan Constitution and law gave the Supreme Court the authority to make temporary judicial assignments. Id. at 275. See also Mich Const 1963, art 6, § 23; MCL 600.225. The Court of Appeals held that the Supreme Court was well within its authority as granted to it by Michigan law to enter an administrative order assigning the judges to the different courts. Id. at 275-76.

Likewise, an Administrative Order that would establish an inactive asbestos docket also has a constitutional and statutory basis. Michigan law recognizes the Supreme Court's broad rulemaking and administrative authority. See Mich Const 1963, art VI, § 5-6; MCL § § 600.219, 600.223. Additionally, the Supreme Court has authority, granted to it by statute, to order the staying of proceedings. MCL § 600.223(2)(g), (3). As such, an Administrative Order issued by this Court to carry out its authority to order the staying of proceedings provides it with the authority to establish an inactive asbestos docketing system.

a) Prior use of administrative orders to control the procedural aspects of mass tort litigation - the breast implant litigation administrative order

There is sound legal precedent for this Court to issue Administrative Orders governing the procedural aspects of mass tort litigation. For example, in 1993 the Supreme Court issued an administrative order to deal with silicone gel breast implant products liability cases. This

²¹ In 1997, Detroit Recorders Court was abolished and merged into the Wayne County Circuit Court. MCL § 600.9931.

Administrative Order serves as an example of this Court's ability to issue directives to deal with areas of procedural concern.

This Order consolidated all silicone gel breast implant cases filed in the state and changed the venue for all of those cases to Wayne County Circuit Court. See Administrative Order 1993-2, Silicone Gel Implant Product Liability Litigation.²² This order consolidated the breast implant cases to coordinate the pretrial proceedings and to "promote the economical and expeditious resolution of the litigation." It required a change of venue to the Wayne County Circuit Court for all future breast implant cases, as well as those pending at the time of entry of the order.²³ In addition, all cases transferred were to comply with the preexisting case management order entered by the Wayne County Circuit Court, an order designed to deal with the pretrial procedures in breast implant cases. The order further mandated the Wayne County Circuit Court to conduct settlement conferences. If the case did not settle, Wayne County Circuit Court was to order a change of venue back to the county where the plaintiff originally filed suit for all remaining proceedings, including trial. The Order suspended all Court Rules regarding change of venue. The breast implant Order provides precedent for entry of a similar Order dealing with the procedural issues in Michigan asbestos cases, an Order which is greatly needed.

²² Similar to the silicone gel breast implant administrative order, the Michigan Supreme Court also issued an administrative order to deal with the rash of filings against Microsoft for antitrust violations. See Administrative Order 2000-5, In Re Microsoft Antitrust Litigation. As with the silicone gel breast implant order, the Microsoft order transferred all Microsoft antitrust cases to the Wayne County Circuit Court for coordination of pretrial proceedings.

²³ The order also stated that there was no implicit finding of proper venue in the third judicial circuit simply by virtue of the order's requirement that all pretrial proceedings take place in the Wayne County Circuit Court.

B. Tolling The Statute Of Limitations

1. The Michigan Tolling Statute

Any inactive asbestos docketing system requires the tolling of the statute of limitations. It may be the case that an inactive asbestos docketing system will require this Court to set forth an additional legal basis to toll the statute of limitations. The Michigan tolling statute provides guidance in resolving this issue. The statute states, in pertinent part, that the statute of limitations will be tolled:

- (a) At the time the complaint is filed and a copy of the summons and complaint are served on the defendant.
- (b) At the time jurisdiction over the defendant is otherwise acquired.

MCL § 600.5856. Under an inactive asbestos docketing system, a possible problem will be that a notice of claim is not a formal "complaint". However, the filing and service of a notice of claim accomplishes the purpose of subsection (a) – the defendants are placed on notice of a potential suit. The only difference between filing a notice of exposure and the filing of a formal complaint is that the defendants are not required to answer. A notice of exposure still places the defendants on notice that they could face a claim in a Michigan court, thus satisfying the spirit of subsection (a).

2. Judicial Tolling

In addition to the Michigan tolling statute, the doctrine of judicial tolling is another option this Court may use to support the tolling of the statute of limitations under an inactive asbestos docketing system. This doctrine was first announced by the United States Supreme Court in American Pipe and Const Co v Utah, 414 US 538 (1974). This doctrine essentially permits a court to toll the statute of limitations at its discretion. Id. at 558.

In American Pipe, the state of Utah sued a variety of defendants for antitrust violations. Utah filed suit eleven days short of one year after the United States and the various defendants entered into a consent judgment regarding the civil enforcement aspect of the federal antitrust laws. The legislation Utah sued under provided for a four-year statute of limitations. This statute also tolled running of the period of limitations during the pendency of any action filed by the United States and for up to one year after the resolution of the government's action. 15 USC § 16(b). Defendants in American Pipe filed a motion under Fed R Civ P 23(c)(1) seeking a ruling that the suit could not progress as a class action. The trial court found accordingly, holding that the class lacked numerosity. Id. at 543. The individual municipalities, towns and cities that made up the class then filed motions to intervene in Utah's action. The trial court held that these motions to intervene were untimely because the filing of the class action on their behalf had not tolled the statute of limitations as to their individual claims. Id. at 544. The Supreme Court reversed, holding that the "commencement of the class action suspended the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." Id. at 554. Defendants argued unsuccessfully that the federal courts were "powerless to extend the limitation period beyond the period set by Congress because that period is a 'substantive' element...and cannot be extended or restricted by judicial decision or by court rule." Id. at 556. The Court explained that the proper test was not whether the statute of limitations was substantive or procedural, but whether the tolling of the period of limitation was "consonant with the legislative scheme." Id. at 558.

In its analysis, the Court recognized the inherent ability of the courts to toll the statute of limitations. Id., citing Burnett v New York Central R Co, 380 US 424 (1965) (statute of limitations tolled for the period of time between the filing of the state court proceeding until its

dismissal for improper venue). Additionally, the Court also recognized other situations where it tolled the statute of limitations, such as due to the defendant's fraudulent concealment. Id. at 559. Accordingly, the Court held that despite the clear time limitation set by the antitrust statutes, it was within its discretion and power to toll the statute of limitations "under certain circumstances not inconsistent with the legislative purpose." Id.

Michigan also recognizes the doctrine of judicial tolling. See Lewis v Detroit Auto Inter-Ins Exchange, 426 Mich 93, 102, 393 NW2d 167 (1986) (stating that "limitation statutes are not entirely inflexible, allowing judicial tolling under certain compelling circumstances" and holding that the no-fault "one-year-back" rule for recovering no-fault benefits was tolled from the time the claim was submitted to the insurance company through the time when the insurance company denied the claim); US Fidelity & Guar Co v Amerisure Ins Co, 195 Mich App 1, 6, 489 NW2d 115 (1992) (same).

This Court, in a previous ruling, expressed its willingness to consider the type of inactive docket proposed in this memorandum. In Larson v Johns Manville, 437 Mich 301, 319, 399 NW2d 1 (1986), this Court stated:

The alternatives facing this Court are: on the one hand, to force all asbestosis victims who do not wish to bring suit for their asbestosis to sue for the possibility of contracting cancer, or, on the other hand, to allow these victims to wait until the discoverable appearance of cancer before bringing suit. The latter alternative seems to us infinitely preferable.

We believe that discouraging suits for relatively minor consequences of asbestos exposure will lead to a fairer allocation of resources to those victims who develop cancers. Rather than encouraging every plaintiff who develops asbestosis to recover an amount of money as compensation for the chance of getting cancer, we prefer to allow those who actually do develop cancer to obtain a full recovery.

IV. CONCLUSION

Given the Court's preference in Larson that the most serious claims be litigated first, an inactive asbestos docket would accomplish this goal by staying the proceedings for pleural claimants while at the same time alleviating the huge burden placed on Michigan trial courts in handling pleural claims.

This Petition is submitted on behalf of the following companies who are defendants in Michigan asbestos cases:

General Motors Corporation
Dow Chemical Company
Borg-Warner Corporation
McCord Corporation
Excelsior, Inc.
Robertson-Ceco Corp.
Detroit Stoker Company
American Standard
Stanley Carter Company
F. B. Wright Company
Davey Union Brown Pump Co.
Thermo Process Systems, Inc.
Industrial Firebrick Co.
Hollinger and Company
Everlasting Valve Company
Rowley's Wholesale
York Rubber Company
General Electric
Detroit Pump & Manufacturing Co.
Aurora Pump Company
Bondex International
General Signal Corporation
The Glidden Company
IMO Industries, Inc.
Leeds & Northrup Company
Standard Fuel Engineering
Stockholm Valve & Fittings
Harrison Piping Supply

Ford Motor Company
Owens Corning Fiberglass
Crown Cork & Seal Compnay
Viking Pump, Inc.
Marlo, Inc.
J. P. Stevens and Company
Goulds Pumps, Inc.
Kentile Floors, Inc.
Livonia Building Materials Co.
Seaway Mechanical Contractors, Inc.
Electric Furnace Company
A. J. Peacock
Industrial Firebrick Warehouse
Pumpford Construction Company
R. C Hendricks & Sons
Banner Engineering
Van Popplin Brothers
Weil-McLain Company
Lockheed Martin Corp.
Blount Inc.
Carver Pump Co.
Gentex Corp.
The Gorman-Rupp Company
Kinney Vacuum Company
Lindberg Corp.
Lee Wilson Inc.
Lamons Metal Gasket

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Dated: July 1, 2003

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